

REMARKS

Claims 66-85 and 88-100 are present, and claims 66-82 and 88-100 are active, in the application.

The rejections of claims 66, 67, 69, 70, 75-77, 82, 88-91, 99, and 100 under 35 U.S.C. § 102(f) are respectfully traversed. The Office has not proffered adequate supporting evidence to show that Applicants derived the invention from another.

The Examiner must presume the applicants are the proper inventors unless there is proof that another made the invention and that the applicant derived the invention from the true inventor. See M.P.E.P. § 706.02(g). Where it can be shown that an applicant "derived" an invention from another, a rejection under 35 U.S.C. § 102(f) is proper. See M.P.E.P. § 2137 (citing Ex parte Kusko, 215 USPQ 972, 974 (Bd. App. 1981)). Derivation requires complete conception by another and communication of that conception by any means to the party charged with derivation prior to any date on which it can be shown that the one charged with derivation possessed knowledge of the invention. Id. (citing Hedgewick v. Akers, 497 F.2d 905, 908, 182 USPQ 167, 169 (CCPA 1974)).

Here, the Office asserts that Applicants did not invent the subject matter of the active claims (66, 67, 69, 70, 75-77, 82, 88-91, 99, and 100), merely because the inventive entity of this application differs from that of U.S. Patent No. 6,355,201. Though the inventive entities differ facially between this application and that of U.S. Patent No. 6,355,201, this is not sufficient evidence to show that Applicants derived the invention from another. The Office must demonstrate (1) complete conception by another and (2) communication of that conception by any means to the party charged with derivation prior to any date on which it can be shown that the one charged with derivation possessed knowledge of the invention. Applicants submit that the Office has proffered inadequate supporting evidence to sustain this ground for rejection. Applicants respectfully request withdrawal of the claim rejections under 35 U.S.C. § 102(f).

The rejections of claims 66, 67, 69, 70, 75, 76, 82, 88-91, 99, and 100 under the doctrine of obviousness-type double patenting as being unpatentable over claims 2, 4, 5, 7, 17, and 18 of U.S. Patent No. 6,740,497 is respectfully traversed. Applicants filed a transmittal document with the terminal disclaimer that provided authorization to the

Commissioner to charge any required fees not covered by the credit card payment to a specified Deposit Account. Attached to this paper is a PDF copy of the transmittal document originally filed with the terminal disclaimer documents.

Applicants respectfully submit that the application is in condition for allowance. Early notification of such action is earnestly solicited.

Respectfully submitted,



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Enc.

ELG Docket No. CAL01-005-US

First
Named
Inventor: Nancy Albritton Examiner: John S. Brusca
Serial No.: 09/990,413
Filing Date: November 21, 2001 Group Art Unit No. 1631
Title: METHOD TO MEASURE THE ACTIVATION STATE OF SIGNALING PATHWAYS IN CELLS

TRANSMITTAL

The following correspondence is being sent electronically to:

M.S. —
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

August 18, 2006
Date

Daniel W. Celander, Ph.D., Registration No. 52,710
typed or printed name of person signing Certificate

Daniel W. Glenday

1. Electronic Credit Card Payment (form not included)
2. Two (2) Terminal Disclaimers

Large entity - Payment by credit card. - The Commissioner is authorized to charge any required fees not covered by this credit card payment or credit any overpayment to Deposit Account Number 50-3123.

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